

February 18, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Name of Case: North Side Coal & Oil Co.

Date of Filing: February 16, 2005

Case No.: TEE-0016

On February 16, 2005, North Side Coal & Oil Co. (the firm) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report," for the year 2004. As explained below, we have determined that the firm's request should be granted.

I. Background

The EIA is authorized to collect, analyze, and disseminate energy data and information. 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b). Form EIA-821 collects information from fuel oil distributors in order to gauge the nation's annual demand for fuel oil and kerosene. Respondents must separate their sales of each product into several end-user categories. Survey results are published in the EIA-821 "Annual Fuel oil and Kerosene Sales Report" and in the "State Energy Data Report," which are available to the petroleum industry and the general public. The data are used by the DOE and other governmental agencies in determining current and projected fuel oil needs on a national, regional, and statewide basis. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages. See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

EIA designated the firm as a member of an annual sample required to prepare and file EIA-821 for the year 2004. The firm requests exception relief from that requirement.

The OHA has authority to grant exception relief where a reporting requirement causes a "special hardship, inequity, or unfair distribution of the burdens." 42 U.S.C. § 7194(a). See also 10 C.F.R. § 1003.25(b)(2). Because all reporting firms are burdened to some extent by the reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected to a significantly greater degree than other, similarly situated firms. Thus, mere inconvenience does not constitute a basis for relief. See *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

In support of its request for exception relief, the firm provides the following information. Prior to November 2004, it had four full time employees -- the manager, a service technician, a truck driver, and a secretary. The service technician quit in November 2004 and the firm has been unable to find a replacement. In addition, the truck driver was struck by a car in December 2004 and has not yet been able to return to work, requiring the use of a leased driver. As a result of the foregoing, the manager is now performing the duties of the service technician and has shifted some office responsibilities to the secretary.

II. Analysis

We have carefully weighed the firm's situation against the public policy interests served by the collection of the information in the EIA-821 report. We have concluded that exception relief, relieving the firm of filing the report for the year 2004, is appropriate. The firm is a small firm, which prior to November 2004 consisted of four employees, including its truck driver. The recent and unexpected departure of the service technician has resulted in two employees - the manager and secretary - performing three jobs. Given this unexpected and recent personnel shortage, the requirement to prepare and file an EIA-821 report for 2004 would place an unfair distribution of burdens on the firm. See *Belcher Oil Co.*, 15 DOE ¶ 81,018 (1987) (personnel shortage of small firm arising from abrupt departure warranted exception relief). We note, however, that this relief is limited to the requirement to file an EIA-821 report for 2004.

IT IS THEREFORE ORDERED THAT:

- (1) The Application for Exception filed by North Side Coal & Oil Co., Case No. TEE-0016, be, and hereby is, granted as set forth in Paragraph (2) below.
- (2) North Side Coal & Oil Co. is relieved of the requirement to file an EIA-821 report for the year 2004.
- (3) This is a final order of the Department of Energy.

George B. Breznay
Director
Office of Hearings and Appeals

Date: February 18, 2005